

803 KAR 1:045. Contractors, subcontractors, prevailing rates of wages.

RELATES TO: KRS 337.530

STATUTORY AUTHORITY: KRS 337.520(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 337.520 authorizes the executive director to make administrative regulations he may deem appropriate to carry out the provisions and purposes of KRS 337.505 to 337.550. The function of this administrative regulation is to interpret the requirements of payments which may be considered as paying the prevailing rates of wages by contractors and subcontractors.

Section 1. The Statutory Provisions. The statute requires all contractors and subcontractors to pay not less than the prevailing rate of wages in legal tender without any deductions. The statute provides an exemption to this requirement where the employer and employee enter into an agreement in writing at the beginning of or during any term of employment covering deductions for food, sleep accommodations or any similar item if this agreement is submitted by the employer to the office and is approved by the office as fair and reasonable.

Section 2. Free and Clear Payment; Kickbacks. Wages cannot be considered to have been paid by the employer and received by the employee unless they are paid finally and unconditionally or "free and clear." The payment of wages as required by the statute will not be met where the employee kicks back directly or indirectly to the employer or to another person for the employer's benefit the whole or part of the wage delivered to the employee. This is true whether the kickback is made in cash or in other than cash. For example, if it is a requirement of the employer that the employee must provide a uniform which will be used in, or is specifically required for, the performance of the employee's particular work, there would be a violation of the statute when the cost of furnishing and maintaining the uniform by the employee cuts into the prevailing rate of pay.

Section 3. Payment Made to Person Other than Employee. (1) Taxes which are assessed against the employee and which are collected by the employer and forwarded to the appropriate governmental agency may be deducted from the prevailing rate of wages. This is applicable to the employee's share of social security, as well as other federal, state, or local taxes. No deduction may be made for any tax or share of a tax which the law requires to be borne by the employer.

(2) Where an employer is legally obliged, as by order of a court of competent and appropriate jurisdiction, to pay a sum for the benefit or credit of the employee to a creditor of the employee, trustee, or other third party, under garnishment, wage attachment, trustee process, or bankruptcy proceeding, deduction from wages of the actual sum so paid is not prohibited; provided, that neither the employer nor any person acting in his behalf or interest derives any profit or benefit from the transaction.

(3)(a) Where an employer is directed by a voluntary assignment or order of his creditor, donee, or other third party, deductions from wages of the actual sum so paid is not prohibited, provided, that neither the employer nor any person acting in his behalf or interest, directly or indirectly, derives any profit or benefit from the transaction.

(b) No payment by the employer to a third party will be recognized as a valid payment of wages required by the statute where it appears that such payment was part of a plan or arrangement to evade or circumvent the statute. For the protection of both employer and employee, it is suggested that full and adequate record of all assignments and orders be kept and preserved.

(c) Under the principles stated in paragraphs (a) and (b) of this subsection, employers will be permitted to deduct from wages sums paid at the employee's direction to third persons for the following purposes: sums paid, as authorized by the employee, for the purchase in his behalf of Savings

Bonds; union dues paid pursuant to a collective bargaining agreement with bona fide representatives of the employees; employees' accounts with merchants independent of the employer; insurance premiums; voluntary contributions to churches and charitable, fraternal, athletic, and social organizations or societies from which the employer receives no profit or benefit directly or indirectly. (1 Ky.R. 833; eff. 5-14-75; TAm eff. 8-9-2007.)